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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/576,450

04/20/2006

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EXAMINER

BUIE, NICOLE M

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

01/07/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/576,450	<b>Applicant(s)</b> TSUDA ET AL.	
	<b>Examiner</b> NICOLE M. BUIE	<b>Art Unit</b> 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-12 is/are pending in the application.
- 4a) Of the above claim(s) 9-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Response to Amendment***

The amendment filed on 10/24/2008 has been entered. Claims 1 and 3-12 remain pending in the application.

***Claim Rejections - 35 USC § 103***

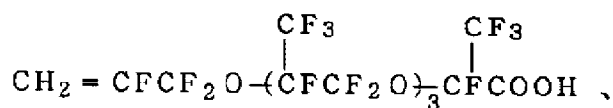
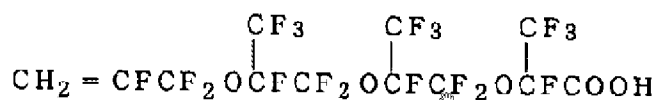
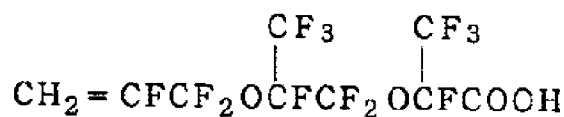
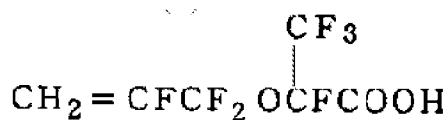
The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**Claims 1-8** are rejected under 35 U.S.C. 103(a) as being unpatentable over Araki et al. (JP 95033782 A1, see machine translation for citation) in view of Araki et al. (WO 95-08598A, see English equivalent (US 5,925,700) for citation).

**Regarding claims 1 and 3-6**, Araki et al. (JP '782) discloses a tetrafluoroethylene polymer aqueous dispersion containing a fluorovinyl group (Claim 1, P25-26, P33-34) for example the formulas as shown below:

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The tetrafluoroethylene polymer has a tetrafluoroethylene unit therefore the tetrafluoroethylene polymer is a perfluoro-based polymer.

However, Araki et al. (JP'782) does not disclose said tetrafluoroethylene polymer aqueous dispersion has a fluorine-containing surfactant content of not higher than 1000 ppm by mass. Araki et al. (WO '598) teaches the amount of fluorine-containing surfactant is not more than 1.0% by weight, which corresponds to about 1000ppm, a fluoropolymer (C3/L34-45).. Araki et al. (JP '782) and Araki et al. (WO '598) are analogous art concerned with the same field of endeavor, namely aqueous dispersions of fluoropolymers. It would have been obvious to one of ordinary skill in the art at the time of invention the use the amount of fluorine-containing surfactant of Araki et al. (WO '598) in the dispersion of Araki et al. (JP '782), and the motivation to do so would have been as Araki et al. (WO '598) suggest to prevent precipitation of the surfactant in the film formed from the aqueous dispersion and prevent whitening (C3/L34-45).

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**Regarding claim 2**, Araki et al. (JP '782) discloses the tetrafluoroethylene polymer aqueous dispersion wherein the tetrafluoroethylene polymer has a tetrafluoroethylene unit content of 20-99.99 mol % (as compared to exceeding 40 mole percent as required by said claim) (Claim 1).

**Regarding claim 7**, Araki et al. (JP '782) does not disclose the tetrafluoroethylene polymer aqueous dispersion which has a solid matter concentration of 5 to 70% by mass. Additionally, Araki et al. (WO '598) teaches a solid content from 30 to 50% by weight (C3/L46-53). It would have been obvious to one of ordinary skill in the art at the time of invention to use the amount of solid matter of Araki et al. (WO '598) in the dispersion of Araki et al. (JP '782), and the motivation to do so would have been as Araki et al. (WO '598) to be able to adjust viscosity and maintain leveling property, and maintain stability of dispersion (C3/L46-53).

**Regarding claim 8**, Araki et al. (JP '782) does not disclose the tetrafluoroethylene polymer aqueous dispersion wherein the particle comprising the tetrafluoroethylene polymer has an average primary particle diameter of 50 to 500 nm. Araki et al. (WO '598) teaches the particle size is not more than 200 nm (C3/L14-22). It would have been obvious to one of ordinary skill in the art at the time of invention to use the particle size of Araki et al. (WO '598) in the dispersion of Araki et al. (JP '782), and the motivation to do so would have been to improve the stability of the dispersion and ease of forming gloss (C3/L14-22).

***Response to Arguments***

Applicant's arguments have been fully considered and are substantially persuasive. The rejection of claims 1, 3, 5, 6, and 7 under 35 U.S.C. § 102 (b) as being anticipated by WO 03/002660 has been withdrawn. The following comments apply:

A) Applicant's argument that the polymerization method disclosed in the Examples of Araki et al. is confined to a suspension polymerization method and therefore, the particle diameter of the fluoropolymer disclosed by Araki et al. is not so small as that of the TFE polymer of the present invention (P8) is not persuasive. Araki et al. teaches that in the case of emulsion polymerization the particle size, the yield, and rate of reaction are improved as well as a soap free polymerization results (P29). Furthermore, Araki et al. is not limited by the examples of polymerization. A reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including nonpreferred embodiments. *Merck & Co. v. Biocraft Laboratories*, 874 F.2d 804, 10 USPQ2d 1843 (Fed. Cir.), *cert. denied*, 493 U.S. 975 (1989). Disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or nonpreferred embodiments. *In re Susi*, 440 F.2d 442, 169 USPQ 423 (CCPA 1971). Furthermore, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., particle diameter of the fluoropolymer) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

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*Correspondence*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NICOLE M. BUIE whose telephone number is (571)270-3879. The examiner can normally be reached on Monday-Thursday with alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Eashoo can be reached on (571)272-1197. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/N. M. B./  
Examiner, Art Unit 1796  
12/19/2008

/Marc S. Zimmer/  
Primary Examiner, Art Unit 1796